

seal, or in the manner specially prescribed to it. 1804, ch. 73, s. 6, But there is no legislative enactment which directs in what mode a corporation of any kind may be compelled to answer in case it should neglect or refuse to do so.

It is admitted on all hands, that in a suit against a corporation none of its members can be taken or personally punished, except, perhaps as a last resort, on account of any contumacy in their corporate capacity. The only mode of proceeding, either to enforce an answer or obedience to a decree is by a *distringas* and sequestration of the property of the body politic. *Bac. Abr. tit. Corporation, E, 2; Lynch v. The Mechanics Bank, 13 Johns. 127.* The State itself is regarded in many respects as a mere body politic; 1785, ch. 36; and in the various instances where it becomes necessary to have it made a party to the litigation, it is represented by its Attorney-General; in which cases, the course of the Court merely allows, that he should be attended with a copy of the bill; but he cannot be forced to answer in any manner whatever; *Willis Eq. Plea. 7;* and therefore, if the bill cannot be taken *pro confesso* against the State; 2 *Mad. Pr. Chan. 335; 1 Fowl. Exch. Pra. 401; Nabob of the Carnatic v. The East Indian Company, 1 Ves. Jun. 371; S. C. 1 Hoven. Supp. 149;* the further progress of the case must await his good pleasure.

Every corporation is and must be composed of, and conducted by natural persons; yet the distinction between the natural and artificial capacities and liabilities of its members has been drawn in such a manner as to create the most serious inconvenience. A body politic, it has been quaintly said, has no soul; and therefore cannot be called on to answer under the obligation of an oath by which a natural person may be bound. *The Case of Sutton's Hospital, 10 Co. 33.* To avoid this difficulty the Court of Chancery has had recourse to a singular shift; which it is admitted rests on very questionable principles; it allows the secretary, book-keeper, or some one or more of the chief members of the body politic to be made co-defendants for the express purpose of obtaining an answer on oath; which answer, contrary *to the general rule
421 in other cases, is received as evidence against the corporation itself. *Fenton v. Hughes, 7 Ves. 289; Dummer v. Corporation of Chippenham, 14 Ves. 253.* Thus allowing the plaintiff to select from among the corporators such one or more of them as he may think proper to make witnesses and to extract from them only such proof as may be entirely responsive to his case.

It is now settled, that a corporation may be charged in actions *ex delicto* as well as *ex contractu*, notwithstanding the general rule, that they can only act and bind themselves by means of their corporate seal. For although the members of the body politic, in their corporate capacity, cannot commit a crime, or perpetrate a felony; yet, since the institution is governed by the intellectual